REPORT

of the

SPECIAL COMMITTEE ON NO-FAULT INSURANCE

January 31, 1972

SPECIAL COMMITTEE ON NO-FAULT INSURANCE

Committee Members

Senator Edward T. Conroy, Chairman

Senator J. Joseph Curran, Jr.

Senator Harry J. McGuirk

Senator Newton I. Steers

Delegate Hugh Burgess

Delegate Devin J. Doolan

Delegate Alan M. Resnick

Delegate Franklin A. Thomason

Reporters

P. H. Hays

~~Timothy E. Clarke~~

Report of Special Committee on No-Fault Insurance

The Chairman and Vice-Chairman of the Legislative Council created the Special Committee on No-Fault Insurance and charged the Committee to study and consider no-fault insurance. To that end, the Committee held nine meetings to receive testimony from all interested parties.

In an effort to outline the national scope of the issue of no-fault legislation, the initial witness to appear before the Committee was M. King Hill, Esq., a Baltimore attorney and a member of the Drafting Committee for the Uniform Motor Vehicle Accident Reparations Act, the model bill of the Commissioners on Uniform State Laws. The Commissioners are preparing the bill, presently in its fifth tentative draft, under a grant from the United States Department of Transportation. The model bill will be in its final form for consideration by the Commissioners during their August, 1972, meeting.

The model bill falls within the category of a "threshhold bill," that is, the limitation on the right to sue is based upon the amount of economic loss sustained by the prospective plaintiff. This is essentially the same theory as the Massachusetts law. The elements of the model bill, besides the partial abolition of tort liability, include compulsory liability insurance for damages exceeding the threshhold, the requirement to carry no-fault medical payment and wage loss coverage, collateral source rules, and a series of items concerning the manner of payment, assigned claims, and rules for discovery.

One advantage which Mr. Hill mentioned concerning the model bill is the adaptability of some of its language. The definitions, the "housekeeping" sections and those sections which any no-fault bill would include may be utilized by those states adopting their own plan, thus allowing for some

uniformity in language except for the monetary limits. This may alleviate some of the concerns about so many different plans throughout the nation.

The representatives of organized labor appeared at the third meeting of the Committee to explain their concerns for insurance reform. The problems which were foremost in their minds included the high cost of premiums, referral to the assigned risk plan, and cancellation or non-renewal of policies. The labor leaders stated that if no-fault insurance provided the needed insurance reform, they supported it, but that they were committed to broad-scale changes in insurance in Maryland.

One major concern of the union officials centered upon the effect of no-fault insurance upon the previously negotiated accident and health plans included in labor contracts. If the no-fault benefits were secondary to the accident and health benefits, then the worker would be paying for automobile insurance which he could never collect. If the no-fault benefits were primary, then the worker was suffering a payroll deduction with no benefit. This problem would have to be resolved before full support by organized labor could be given to a no-fault plan.

Two Maryland officials testified before the Committee to explain the mechanics of entering into a no-fault system. The Motor Vehicle Administration would be faced with revamping their present system on financial responsibility and the Unsatisfied Claim and Judgment Fund. The Insurance Department, under no-fault, must approve the rates based on an untested and completely revamped rate structure. The officials were convinced this would be accomplished with sufficient lead time.

The representatives of the insurance trade associations, individual companies and agents, all presented various proposals to the Committee, each

encompassing same elements of no-fault coverage. These ranged from a "pure" no-fault system under which no tort action would be permitted, to limited systems based, not on a threshhold but rather based the amount of recovery for general damages on a percentage of the medical expenses.

The insurance representatives were closely questioned concerning the rates to be expected under a no-fault system. One person predicted a decrease from "adequate" rates but conceded that, from his perspective, rates were not now adequate. Others would generally agree that rates would remain the same and may go down. The major difficulty arises in estimating rates when there has been little or no actuarial experience. The actuaries would prefer to have approximately three to five years' experience on which to base their rates, especially since more drivers would be provided benefits and the rate classification would be different.

Several members of the legal profession testified concerning the constitutionality of no-fault legislation, the effect of removing the concept of citizen responsibility, and the possibility of fraudulent claims. The latter could occur because of the necessity of boosting the damage estimates to meet the threshhold limits or by claiming every injury occurred in an automobile. The constitutionality of the legislation is a multi-faceted argument based upon equal protection and the denial of the right to a trial by jury. One other issue raised by a practicing attorney is that a legal point successfully argued in court becomes a precedent for the out-of-court settlement of many other similar cases and, therefore, the trial has a much more far reaching public effect than the private settlement.

Because the experience in Massachusetts was a major issue before the Committee, the Chairman of the Legislative Council approved a trip to Boston so that the Committee could obtain some first-hand information.

The Committee heard testimony of State officials, members of the Bar and insurance representatives. It became apparent that there was still some confusion on the operation and effect of the no-fault system. The witnesses, however, agreed that the reason for passage in Massachusetts of their bill was simply as a rate-reducing measure. After that, agreement ceased and various interpretations were advanced. The decreases in rates have taken place but the rates were very high because of the long-range effect of compulsory automobile insurance which had been in effect since 1927. The court dockets may be less crowded but the back-log was still at least two years. The savings have taken place in the bodily injury rates but the property damage rates are now being restructured and generally rising, in some instances offsetting the decreases gained.

The Massachusetts insurance representatives commented that the enactment of no-fault insurance had resolved many of their problems but that it had reduced their work force by approximately 5% due to the decrease in law suits. However, because of the large number of law suits prior to this legislation, the staff needed for that may have been inflated.

The Massachusetts act was upheld in a case brought by a claimant in which many constitutional arguments were raised. This case, Pinnick v. Cleary, 271 N.E. 2d 592 (Mass. 1971) went to the heart of the no-fault issue in that it challenged the constitutionality of the wrongdoer's tort immunity.

The Committee studied the acts introduced in other states which take effect on January 1, 1972. These included Delaware, Florida, Illinois, Oregon, and South Dakota. Only Florida and Illinois place a limitation on the right to sue and Illinois' act has been held unconstitutional on equal protection grounds, subject to an appeal heard January 28, 1972. Each act,

and also the state operated plan in effect since 1968 in Puerto Rico, included details applicable primarily to that individual jurisdiction as well as elements of insurance reform which were applicable to all areas. The Committee also had the benefit of many reports and publications, a listing of which appears in an appendix to this report.

The minutes of the Committee meeting of January 11, 1972, follow this summary of testimony. During that meeting, the Committee heard the report on the Governor's proposal and also voted for the concepts which resulted in the bills favorably reported by the Committee.

RECOMMENDATIONS

The Special Committee on No-Fault Insurance, composed of four members from the Senate and four from the House of Delegates, was faced with a difficult task. The problems of increasing automobile insurance premiums, arbitrary cancellations and non-renewals, the need for additional traffic safety legislation and many other areas of concern were placed before the Committee.

Both the members and staff researched the voluminous material dealing with reparation reform. It was discovered that there was a diversity of expert opinion and it was difficult to assess the preponderance of the evidence. However, after the conclusion of the testimony, advice from government agencies, data collection, comparison of programs in other states, and reviewing the United States Department of Transportation study, the Committee voted and a majority supported the following recommendations:

A. COMPULSORY INSURANCE:

This bill provides a new subtitle to the Insurance Code requiring every Maryland driver to purchase first-party bodily injury, wage loss, and collision insurance. Also, the tort liability of a driver would be abolished for damages below $500.00 of wage loss and medical expenses, subject to certain exceptions. The bill further requires that all Maryland drivers maintain in effect minimum liability insurance in the amounts specified under the Financial Responsibility Laws.

B. UNINSURED MOTORIST COVERAGE:

To complement the first party coverage and to protect more fully the Maryland driver, the second bill requires the driver to carry uninsured motorist coverage in the event he suffers damage caused by an out-of-state driver not protected by liability insurance.

C. RATE CLASSIFICATION:

The third bill addresses itself to the issue of premium rates and the classification structure for determining an individual's rate. So that a Maryland driver can check his rate classification, this bill requires full disclosure of that classification, the actual reason for it, and the possible rate classifications into which a driver may be placed.

D. AUTOMOBILE BUMPERS:

Last year, the General Assembly enacted a strong automobile bumper law but deferred the effect of it until 1974. The fourth Committee proposal would make the provisions of the bumper law effective on January 1, 1973, requiring a bumper to be capable of sustaining with no damage five

mile-per-hour collision into a stationary wall.

E. RE-EXAMINATION OF DRIVERS:

The final bill in the Committee package would require a re-examination every four years of the driver's eyesight as a condition for the renewal of an operator's license.

Special No-Fault Committee Meeting

January 11, 1972

Annapolis, Maryland

Senator Edward Conroy, Chairman, called the meeting to order. Those present were: Senators Newton Steers, Harry McGuirk, Joseph Curran, Jr., and Delegates Devin Doolan, Hugh Burgess, Frank Thomason, and Alan Resnick.

Mr. Allen Wilner, Administrative Aide from Governor Mandel's office, discussed what the Executive thinking was on auto reparation but stressed that much of his testimony concerned tentative ideas and that nothing was reduced to bill form.

Senator Steers asked if the Jewell Report was available. Delegate Doolan said that he had understood that it was lengthy and not yet available, that he thought the committee would be premature to draft a bill before looking at the report.

Mr. Wilner said that their proposals had come from three sources.

(1) Complaints from the public to the Insurance Commissioner concerning cancellations, renewals, and reclassifications into higher ratings.

(2) Proposals offered by Speaker Lowe.

(3) Meeting with insurance companies and their proposals. He said Mr. Jack Eldridge of the Governor's staff had met with these people.

Mr. Wilner stated that one of their first considerations was amending Section 242C of Article 48A which would give the Insurance Commissioner authority to ask the insurance companies, at any time, about their rates and classification system. He said it seemed apparent that some rates were set on a subjective basis, i.e., the policyholder might seem like a bad witness by being ugly, a bad credit risk, homosexual, etc. Consideration was being given to allow the Commissioner to disallow certain classifications and upon finding any classifications improper, to force the companies to reimburse the client. It was hoped that this would force the insurance companies to do their own housecleaning.

Mr. Wilner said they also considered improving on the 45 days notice, now required, of cancellation or non-renewable by adding notice of increase of premium, or decrease of coverage and sending triplicate copies to the policyholder. If the policyholder then wishes to protest, he may sign the copies and send them to the Insurance Commissioner. At the hearing, the burden will be on the insurance company and if the Commissioner finds injustice, he may award counsel fees to the policyholder.

Senator Conroy asked if any other state had that language.

Delegate Resnick said "no."

Mr. Wilner explained that the Commissioner could reject any frivolous protest, and that hopefully the hearing would be concluded before the 45 days were up.

Delegate Burgess asked what percentage of complaints were considered justified by the Commissioner now.

Mr. Wilner replied Mr. Hatem had felt about 30-40%.

He said another consideration was allowing companies to offer family policies which would exclude a named person, one usually considered a bad risk, and state what the premium costs would be with and without that person.

Delegate Resnick said the problem involved "permissive use."

Senator Conroy said it could be in the contract.

Delegate Burgess said that Travelers already does it. When the parent signed the contract it excluded the bad-risk teenager.

Mr. Wilner asked for a copy of such a policy.

The insurance bill being considered would provide on every policy a $100 deductible first party property damage with the option to include all or part of the first $100. This would cover the motor vehicle and the property in it. Other property damage could be covered and if two companies were involved in a claim, the companies could split the costs.

Also considered was direct first party hospital and medical costs up to $3,000. This would be a mandatory med-pay. In addition there would be a wage loss payment, up to $1,000 payable at 85% of income, per person. There would be no other collateral source other than the Workmen's Compensation and that was still being debated. They were going to leave the collateral sources open to allow the others (Blue Cross, etc.) to tailor their policies to fit the auto insurance; but in no instance was the policyholder to receive payment twice.

There would also be a mandatory fee for the unsatisfied claim fund, a residual liability to take care of accidents involving those with an illegal driver or an out-of-state driver.

When an insurance company terminates an agency, they would be forced to give 60 days notice to every insurer, advice as to where they could be placed elsewhere, or the carrier must cover the policyholder for one year if they were not successful in relocating the policy.

Speaker Lowe suggested a compulsory insurance which was tied to part of the Jewell plan. This would set up a state company to take care of the bad risks who had been rejected twice, cancelled, or non-renewed. It would take over all the activities of UCJ and the premiums would be set according to the records of the drivers. A Maryland Auto Insurance Fund would be set up, financed by the present tax on premiums, up to 2%, and an additional 50¢ charge on the registrations. Mr. Wilner said this would make up for the $40 fee lost from the present UCJ fund. He said it would be possible that they may not need the

tax on the premiums at a later date.

He was asked if the Motor Vehicle Administration would be involved.

Mr. Wilner said yes, and that the Fund would have its own employees, or could put out contracts to investigate the cases and provide legal services.

Another Lowe proposal would give exclusive jurisdiction to the District Court to hear cases up to $10,000. A six-man jury would hear the cases, and a direct appeal to the Court of Appeals would be provided. This would have to carry a later effective date because the courts do not have the facilities, at the present time, to handle such a docket.

Delegate Resnick observed that Maryland doesn't have a serious crowded docket problem now.

Speaker Lowe also suggested a comparative negligence law, similar to the Wisconsin statute; and a limit of attorney's fees to 25% if the settlement was $5,000 or less, and 33% if more than $5,000. Also to be offered was a 6% assessment if the court finds any inordinate delay on the part of the defense in a liability case.

He pointed out that there would be no tort restriction except on the recovering of the payment of the medical losses, up to $3,000 and the work loss, up to $1,000.

Senator Curran asked if they had a target date to get the plan.

Mr. Wilner said that part which included the insurance companies could be effective on July 1, 1972, and the compulsory and state company could be effective by January 1, 1973.

Delegate Doolan asked to what extent the DOT Report was considered.

Mr. Wilner said that a no-fault system, standing by itself, did not solve many of the problems.

Senator Conroy thanked Mr. Wilner for his testimony.

The Chairman then opened the meeting to consideration of the committee's own report.

Senator Steers stressed the consideration of tort limits, pointing out that BI in Massachusetts was reduced and P.D. went up when it was not subjected to no-fault.

Senator McGuirk said he wished to preserve tort liability, but that if 95% of the cases could be treated expeditiously, it would be an advantage to the people, and that the other 5% could sue.

Delegate Doolan said he thought a fundamental question was that of gaining premium reductions.

Delegate Resnick asked if 'no-fault' solved the gut issues. He said that if a social need existed to pay for losses incurred by medical costs and wage loss then the committee could recommend mandatory wage and medical benefits carrying

a prompt payment within 30 days.

Senator McGuirk moved that the committee recommend mandatory coverage for medical pay and work loss, on a first party basis, with prompt payments.

Senator Steers said it was essential to know about the tort right status. He agreed on the principle of no duplicate payments.

The Chairman called for the question, the ayes prevailed, the motion carried.

Senator McGuirk, seconded by Delegate Resnick, moved to recommend that "to the extent of benefits received from the first party automobile insurer there can be no recovery in a judgement." It was explained that this would not allow double payments.

The Chairman called for the question, the ayes prevailed, the motion carried.

Property Damage and possible options were then discussed.

Delegate Resnick moved, seconded by Senator Steers, that the Committee recommend to the Legislature, hopefully to produce a reduction in automobile insurance premiums, that it be mandatory that there be $100 deductible no-fault Property Damage coverage, which premiums would be based on the value of the automobile at the time of the policy, that optional features covering the insurer up to the first $100 be offered, that prompt payments be assured, and that the residual liability on the non-auto damage up to $5,000 as is in the present law, be retained.

The Chairman called for the question, the ayes prevailed, the motion carried.

Senator Steers said, as a part of the First Motion passed, he wished to offer a motion that "with a view towards reducing rates on Bodily Injury premiums, the Committee Bill should incorporate a threshold, ranging from $500 - $3,000 of out of pocket medical costs below which no tort claims would be recognized, with certain exceptions."

Senator Conroy seconded the motion.

Delegate Doolan offered an amendment to the motion stating that the threshold include both medical pay and wage losses, after which tort liability would exist.

Delegate Thomason said he would rather raise the threshold to $1,000 and enlarge on the exceptions.

Senator McGuirk offered a substitute amendment which would establish a threshold of $750 of combined medical and wage losses.

Delegate Doolan inquired if the committee would consider a $500 combination threshold for the wage earner and a $250 threshold for the non-wage earner.

Delegate Doolan then amended the Steers' motion to establish the threshold of $500 economic loss for the wage earner and $250 medical payments for the non-wage earner.

The Chairman called for the question, the ayes prevailed, the motion carried.

The exceptions were then established to include death, dismemberment, loss of sight,speech, or hearing, serious disfigurement or fracture, permanent loss or loss of use of bodily functions, and the loss of one or more of the five senses.

Limits, both on medical payments and wage loss payments, were then discussed.

Senator Steers moved that every policy must contain a first party med pay with unlimited payment and a wage loss payment provideding for 66 2/3% of the income, not to exceed $100 per week nor to exceed 156 weeks of payments.

The motion was seconded by Senator McGuirk.

The Chairman called for the question, the ayes prevailed, the motion carried.

Delegate Resnick reminded the Committee that the testimony heard previously plus that considered in Massachusetts had produced no definite evidence that no-fault would solve the major problems facing the Maryland driver; that cancellations, non-renewables, and reclassification to higher ratings made up the majority of complaints. He pointed out that the committee had corrected the problem of prompt payments by their first motion, and had provided some relief with their recommendations concerning Property Damage. He then recalled the words of the actuaries who had stated that it would take several years before they could tell how the programs would really work out.

It was moved and adopted that the Committee recommend mandatory Uninsured Motorist insurance so far as the Maryland citizen, driving out-of-state, was concerned.

Delegate Burgess moved that in the interest of traffic safety, consideration be given by the committee to charge the negligent driver for the first $300 of losses he had inflicted. He explained that this would come out of his pocket and might thus deter negligent drivers. The committee agreed to explore the possibilities of the suggestion.

Senator Conroy moved, seconded by Senator Curran that "Every private passenger automobile manufactured or assembled on and after January 1, 1973, sold and registered in this state, shall be sold subject to the manufacturer's warranty that it is equipped with an appropriate energy absorption or attenuation system which is capable of sustaining a five mile-per-hour direct front and rear impact with a standard Society of Automotive Engineers (SAE J-850) test barrier without sustaining any damage to the automobile and without compromising existing standards of passenger safety."

The Chairman called for the question, the ayes prevailed, the motion carried.

Senator Curran moved, seconded by Senator Steers, that the committee endorse the principle of a physical reexamination be given to every driver at least once every four years.

The Chairman called for the question, the ayes prevailed, the motion carried. Senator Conroy read the statements issued from DOT regarding the drunk driver. He mentioned a program sponsored by the American Automobile Association, based on the Driving While Intoxicated program instituted in Phoenix, Arizona. This provides for compulsory, court-controlled, attendance of the DWI driver to a certified university seminar, specifically designed to present a rehabilitation curriculum.

Delegate Resnick moved, seconded by Delegate Burgess, that "Because studies showed that a disproportionate number of accidents were caused by drunk drivers, the committee should encourage efforts of rehabilitation, and support the continuation of any programs aimed at the rehabilitation of the drunk driver."

The Chairman called for the question, the ayes prevailed, the motion carried.

After a discussion of the amounts established to prosecute drunk drivers, Senator Steers moved, Senator Curran seconded that the committee recommend that the present rates of .15 for prima facie intoxication, and .10 of presumption be lowered to .10 and .05.

Senator Steers added the language that the threshold limit of tort liability would not apply to a victim of an accident caused by a driver adjudicated to be under the influence of any drug, including alcohol.

The Chairman called for the question, the ayes prevailed, the motion carried.

Senator Steers mentioned that he would later suggest that such exceptions include drivers of stolen cars, etc.

Delegate Burgess suggested that all companies submit annually their total amount of losses and the total amount of insurance they wrote. If a company had written 7% of the insurance in Maryland, it would then assume 7% of the losses.

Delegate Thomason stated he thought that would be unfair, that it would penalize those companies that used good underwriting practices and would be against the free enterprise system.

Delegate Resnick moved, seconded by Senator Steers, that "in order to better inform the Maryland citizen, the committee proposes that a realistic classification system, based on an objective basis of risks with reasons so stated, be established, that the Commissioner be given the authority to revise classifications, that citizens be notified why their rates are being increased and to which new classification they are being assigned with reasons stated by the company."

The Chairman called for the question, the ayes prevailed and the motion carried.

The subject of comparative negligence, as opposed to the contributory negligence concept which is a part of the Maryland law, was then discussed.

Delegate Resnick moved that in lieu of the no-fault tort limit, comparative negligence be instituted.

Senator Steers substituted the language that the principle be applied only to those cases which by previous proposals established fault.

The Chairman called for the question, the nays prevailed and the motion failed.

The question of a possible effective date was then discussed.

Delegate Resnick moved that January 1, 1973 be set, except for the portions with the no-fault aspect which would carry an effective date of 1974. He explained that such a date would allow time for actuary studies to be completed, and legal opinions rendered. He added that the 1974 date would include only the Bodily Injury no-fault language, that the property damage could go into effect in 1973.

Senator Steers amended the motion to establish January 1, 1973, the effective date for all of the bill, considering the possibility that the companies could issue such policies as they came up for renewal.

The Chairman called for the question, the ayes prevailed and motion carried.

The Chairman then moved, seconded by Senator Steers, that the committee prepare a bill, after the report was in. That motion was carried.

The Chairman informed the members that as soon as the staff work was done, another meeting would be held and the final report would be gone over.

The meeting was adjourned at 6:10 p.m.

APPENDIX A

Reports and Publications

1. Bills

(a) Congress
   (1) H.R. 10222 The Moss-Eckhardt National No-Fault Plan
   (2) S. 2322 The District of Columbia No-Fault Plan by Senator Stevenson

(b) States
   (1) Delaware
   (2) Florida (with supporting materials)
   (3) Illinois (with supporting materials)
   (4) Maryland
      (i) HB 508 of the 1931 Session by Delegate Gorfine
      (ii) HB 151 of the 1971 Session by Delegate Blumenthal
   (5) Massachusetts (with supporting materials)
   (6) Oregon
   (7) Puerto Rica
   (8) South Dakota

(c) Commissioners on Uniform State Laws
   (1) 2nd, 3rd, 4th, and 5th Tentative Drafts

(d) Insurance Company Plans
   (1) American Insurance Association (with supporting materials)
   (2) American Mutual Insurance Alliance (with supporting materials)
   (3) Maryland Association of Insurance Agents (with supporting materials)
   (4) National Association of Independent Insurers (with supporting materials)
   (5) Nationwide Insurance Company (with supporting materials)

(e) American Trial Lawyers Association

2. Reports and Position Papers

   (1) United States Department of Transportation, "Automobile Insurance and Compensation Study"
   (2) United States House of Representatives, "Hearings on No-Fault Motor Vehicle Insurance" - 4 volumes
   (3) New York Department of Insurance, "Automobile Insurance - For Whose Benefit"
   (4) Maryland Unsatisfied Claim and Judgment Fund Board, 1971 Report
   (5) American Association of Retired Persons
   (6) Automobile Insurance Cost Determinants, Mathematica Study
   (7) Study of Keeton-O'Connell Basic Protection Plan

3. Court Opinions

   (1) Grace v. Howlett, 71 CH 4737, Circuit Court of Cook County, Illinois (1971)

   (2) Pinnick v. Cleary, 271 N.E.2d 592 (Mass. 1971)

APPENDIX B

List of Witnesses

A. Maryland State Officials

1. Thomas Hatem
   Commissioner of Insurance

2. William J. S. Bricker
   Deputy Administrator
   Motor Vehicle Administration

B. General Proponents

1. William P. Cunningham
   Dean, School of Law
   University of Maryland
   Maryland Commissioner on Uniform State Laws

2. Hon. Charles S. Blumenthal
   Member, House of Delegates

3. Albert J. Mattes
   United Auto Workers

4. Alvin Lloyd
   United Auto Workers

5. Charles A. Della
   A.F. of L. - C.I.O.

6. Hon. Joseph R. Raymond
   Member, House of Delegates
   Maryland Commission on Insurance Reform

7. Hon. Barbara Mikulski
   Member, Baltimore City Council
   Maryland Commission on Insurance Reform

C. General Opponents

1. Patrick A. O'Doherty
   Attorney

2. Jack Olender
   Attorney

3. Robert Stanford
   Attorney

4. Lawrence Bulman
   Attorney

D. Presented No-Fault Plans

1. M. King Hill, Jr.
   Maryland Commissioner on Uniform State Laws
   Member, Drafting Committee for the Uniform Motor Vehicle Accident Reparations Act

2. Melvin L. Stark
   Vice-President
   American Insurance Association

3. James J. Doyle
   National Association of Independent Insurers

4. J. Cookman Boyd
   American Mutual Insurance Alliance

5. John E. Fischer
   Vice-President
   Nationwide Mutual Insurance Company

6. Wilbur A. McKee
   Actuary
   Nationwide Mutual Insurance Company

7. Frank Brooks
   Maryland Association of Insurance Agents

E. Massachusetts Witnesses

1. John G. Ryan
   Commissioner of Insurance

2. Anthony J. Burke
   Staff Director
   Joint Legislative Insurance Committee

3. Professor William Schwartz
   Boston Law School

4. Paul R. Sugarman
   Attorney

5. Paul W. Feger
   General Counsel, Liberty Mutual Insurance Company

6. Walker Richardson
   Chief Actuary
   Liberty Mutual Insurance Company

7. E. Keith Simmons
   New England Claims Manager, Liberty Mutual Insurance Company

ATTAchment.

No Fault Insurance

"No-fault" insurance is a subject that continues to receive attention from the public, the press, and governmental officials. Increasingly, it is becoming a much discussed issue; as a result, lawmakers, regulatory officials, consumers, and others have been evaluating the present system of auto reparation and considering the possibilities of an alternate approach.

In 1970, the Commonwealth of Puerto Rico initiated its "No-Fault" auto insurance plan, and since then, 25 states have introduced no-fault bills; four states, Massachusetts, Delaware, Florida, and Illinois, have passed legislation embracing this concept.

In the Congress, Senator Philip A. Hart, (D., Michigan) and Senator Warren G. Magnusen (D., Washington) introduced legislation establishing nation-wide standards for no-fault insurance. Similar legislation was introduced in the House.

President Nixon endorsed no-fault insurance in principle. The Nixon Administration speaking through Transportation Secretary John Volpe, proposed that Congress declare by Resolution "it is the sense of Congress" that the states enact no-fault legislation.

Secretary Volpe advocated the Council of State Governments draft model state auto insurance legislation. A draft proposal of such legislation is now being prepared by the Council and the National Conference of Commissioners on Uniform State Laws. A working and study draft is expected to be available in early December, 1971. Present plans of the Commissioners on Uniform Law call for the bill to be submitted to the states prior to the 1973 sessions.

The American Insurance Association has also circulated a model draft.

Of the four state laws passed, the common factors are the elements of payments of medical, work loss and funeral benefits without regard to fault, making it mandatory that such policies are available, and limited tort claims.

Each of the four states has taken a somewhat different approach to automobile reparation benefits. Massachusetts, the first state to legislate in this field, set a limit of $2,000 per person for medical and funeral benefits. No dollar limit on work loss benefits was imposed; such benefits, however, are limited to 75% of the average weekly wage of the injured person.

The Florida law established benefits payable to a total of $5,000 per person. These benefits include medical care, incidental expenses and income loss. Funeral benefits cannot exceed $1,000.

Delaware handled benefits in the same manner as Florida, except the total limit was set at $10,000 per person and $20,000 for all persons injured in any one accident, and $2,000 for funeral expenses.

Illinois subjected medical, hospital and funeral benefits to a limit of $2,000 per person and granted payment of 85% of lost income, with a limit of $150 per week for 52 weeks.

The concept of limited tort claims has been one of the most controversial aspects of no-fault insurance in its departure from the historic common law tort system which has developed over a period of hundreds of years.

This issue was the very first to reach the courts in Massachusetts. According to that law, a plaintiff may not recover damages for pain and suffering unless the medical expenses are in excess of $500 or unless the injury "(1) causes death, or (2) consists in whole or in part of loss of a body member, or (3) consists . . . of permanent and serious disfigurement, or (4) results in loss of sight or hearing . . . or (5) consists of a fracture."

The plaintiff in the Massachusetts case had been involved in an accident caused by the negligence of the defendant. Under the traditional tort law, he would have collected $115 for his medical bills, $800 for pain or suffering, and $650 for his loss of earnings.

Under the no-fault law, the plaintiff said he was entitled only to the $115 in medical expenses and $86 in wages. He argued he was deprived of his constitutional right to full recovery under usual tort law.

The Massachusetts chapter of the American Trial Lawyers Association, the American Trial Lawyers Association itself, and the Massachusetts Bar Association joined the plaintiff in opposing the law.

The Massachusetts Supreme Judicial Court, the highest court of that state, upheld, in Pinnick v. Cleary, the no-fault departure from the traditional tort law and ruled that the defendant is not liable to the plaintiff for pain and suffering or for any damages covered by the personal injury protection benefits to which the plaintiff is entitled under his own liability policy.

The Massachusetts law, however, does give an insurer paying no-fault benefits a right to recover the benefits it pays and the cost of processing its claim from the insurer of any other Massachusetts-insured vehicle involved "whose owner or operator would, except for the exemption from tort liability be liable for such damages in tort." Such determinations are to be made by agreement or by arbitration.

The Delaware plan is not a true no-fault in that it allows recovery in tort. Its most distinctive feature is the establishment of an arbitration program which makes it mandatory that "every insurance policy shall require the insurer to submit to arbitration a claim for damage to a motor vehicle, other than the insured motor vehicle, including loss of use of such vehicle upon the request of the owner of the damaged vehicle."

All arbitrations shall be administered by the Insurance Commissioner or his nominee. He is charged with setting up a panel of arbitrators consisting of attorneys and insurance adjusters. Three individuals from the panel of arbitrators, one of which must be an attorney, will hear each request for arbitration.

In treating liability for property damage, the Florida bill gives each owner subject to the act an exemption from suit up to $550. An owner may, but is not required to, purchase either collision insurance, which covers damage to his vehicle without regard to fault, or basic insurance coverage, which covers damage to his vehicle due to the fault of another. In either event, he collects from his own insurer. He may self-insure against physical damage. If his car is damaged because of another, he may sue the other party if his damages exceed a threshhold of $550 and may collect damages on the basis of the entire amount.

An effort was made in the Massachusetts law to include a reduction of at least 15% in the rates for all automobile insurance coverage. This provision was struck down insofar as it applied to the property damage coverage. The Massachusetts Supreme Judicial Court, in Aetna Casualty and Surety Company v. Commissioner of Insurance, 263 N.E. 2d 698 (1970) ruled that the mandated reductions were confiscatory and therefore invalid.

Last January, Governor Mandel asked Mr. John R. Jewell, State Secretary of Licensing and Regulation, to investigate auto insurance practices and to recommend corrective legislation. Since June 9th, Mr. Jewell has been holding hearings throughout the State and is planning to complete his schedule by mid-September.

He is discussing a proposal which would offer a plan for a state-owned auto insurance corporation, and a limited no-fault system for medical payment cost coverage up to $1,000.

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